

REMARKS

Reconsideration of the application in light of the above amendments and the following remarks is respectfully requested.

Status of the Claims

Claims 25-53 are pending. Claims 1-24 were previously cancelled without prejudice or disclaimer of the subject matter recited therein. Claim 25 has been amended. No new matter has been added. Upon entry of this amendment, claims 25-55 will be pending.

Information Disclosure Statement

Applicants note that the Examiner has not consider the foreign-language references DE 10128927 ("AJ") and DE 10046240 ("AK"), which were listed on the Information Disclosure Statement ("IDS") filed September 9, 2004. It is respectfully submitted that English language abstracts of the AJ and AK references were provided in the September 9, 2004 IDS. Moreover, the AJ reference is discussed in the Specification at paragraph 0033. Therefore, the requirement for a concise explanation of relevance has been met for these two references. See MPEP §609.04(a) III. Applicants respectfully request that the Examiner consider and initial the AK and AJ references originally submitted in the September 9, 2004 IDS.

Rejection under 35 U.S.C. §102(e) based on Toyoshima

Claims 25-41 and 44-53 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Publication 2004/0044753 to Toyoshima et al. ("Toyoshima"). Applicants respectfully note that Toyoshima has a filing date of February 27, 2002.

Toyoshima describes a system and method for dynamic business management of a network in which a real time variable (*i.e.*, data) is selected and measured. See Abstract.

Independent claim 25 of the present application, as amended, recites "sending measurement packets with an adjustable distribution in time so as to determine first status information." Support for the amendments may be found, for example, in the Specification at paragraphs 0047-0052. It is respectfully submitted that Toyoshima does not teach this feature of claim 25. In contrast, Toyoshima merely describes monitoring a network or device data source, by using "a real time variable from the Measurement Libraries 730 [which] is selected to have its associated network element . . . polled by the server 712." (Toyoshima, paragraph 0048). *See* also, Toyoshima, Figure 9. Because Toyoshima fails to teach at least the above-recited feature of claim 25, it cannot anticipate claim 25 or any of its dependent claims.

Reconsideration and withdrawal of the rejection of claims 25-41 and 44-53 under 35 U.S.C. §102(e) based on Toyoshima is respectfully requested.

Rejection under 35 U.S.C. §102(e) based on Cruickshank

Claims 25, 36-37, and 39-44 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Publication 2003/0126256 to Cruickshank III et al. ("Cruickshank").

Cruickshank describes a system for determining network performance in which a number of first metrics are combined into a second metric. See Abstract.

Independent claim 25 of the present application, as amended, recites that "sending measurement packets with an adjustable distribution in time so as to determine first status information." It is respectfully submitted that Cruickshank does not teach this feature of claim 25. In contrast, Cruickshank merely describes that the controller 46 is "configured to collect network data from . . . elements of the network 12" which can be performed either synchronously or asynchronously. Synchronous data collection occurs "by polling devices on the network 12," while asynchronous data collection occurs "periodically according to predetermined desired time intervals." *See*, Cruickshank, paragraph 0030. Because Cruickshank fails to teach at least the above-recited feature of claim 25, it cannot anticipate claim 25 or any of its dependent claims.

Reconsideration and withdrawal of the rejection of claims 25, 36-37, and 39-44 under 35 U.S.C. §102(e) based on Cruickshank is respectfully requested.

New Claims

New claims 54 and 55 depend from claim 25, and are directed to features of the measurement system. Support for new claims 54 and 55 may be found, for example, in the Specification at paragraphs 0047-0050. Applicants submit that new claims 54 and 55 are patentable for at least the same reasons as discussed above with respect to base claim 25.

CONCLUSION

Each and every point raised in the Office Action mailed February 14, 2007 has been addressed on the basis of the above remarks. In view of the foregoing it is believed that claims 25-55 are in condition for allowance and it is respectfully requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue.

If there are any other issues remaining which the Examiner believes could be resolved through a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

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Respectfully submitted,

By 

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